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To: Commissioner of Patents	From: Kathy Manke
Fax No.: 571-273-8300	Our Ref.: CABL.02US01
Application Serial No.: 09/832,750	Fax No.: <u>(970) 492-1101</u>
Examiner: Jamieson W. Fish	Phone No.: <u>(970) 492-1100</u>
Art Unit: 2617	Total Pages: 17 (Inc. cover sheet)
Confirmation No. 2531	
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Atty. Docket No. CABL02US01	

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PAGE 1/17 \* RCVD AT 9/16/2005 6:50:23 PM [Eastern Daylight Time] \* SVR:USPTO-EFXRF-6/26 \* DNIS:2738300 \* CSID: \* DURATION (mm:ss):05:22

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PATENT APPLICATION

DOCKET NO.: CABL02US01

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Majid Chelehmal

Application No.: 09/832,750

Examiner: Jamieson W. Fish

Filing Date: 4/10/2001

Group Art Unit: 2617

Title: ON-DEMAND DATA SYSTEM

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## TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Sir:

Transmitted herewith is/are the following in the above-identified application:

<input type="checkbox"/> Response/Amendment	<input checked="" type="checkbox"/>	Petition to extend time to respond
<input type="checkbox"/> New fee as calculated below	<input type="checkbox"/>	Supplemental Declaration
<input type="checkbox"/> No additional fee		
<input checked="" type="checkbox"/> Other: Notice of Appeal and Pre-Appeal Request for Review		

CLAIMS AS AMENDED BY LARGE ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS		MINUS			X 50	
INDEP. CLAIMS		MINUS			X 200	
[ ] FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM					+ \$360	\$
EXTENSION FEE	1ST MONTH \$120	2ND MONTH X \$450	3RD MONTH \$1,020	4TH MONTH \$1,590	\$120.00	
				TOTAL FEE FOR THIS AMENDMENT	\$120.00	

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Date of Transmission: 9/16/05

Signature: Kathy M. Manke

Typed Name: Kathy M. Manke

Respectfully submitted,

By: William W. Cochran  
William W. Cochran  
Attorney for Applicant(s)  
Reg. No.: 26652  
Telephone No.: (970) 492-1100  
Date: September 16, 2005

PTO/SB/93 (07-05)

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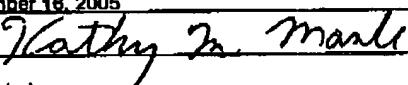
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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)  
CABL02US01

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on September 16, 2005

Signature Typed or printed name Kathy M. MankeIn re Application of  
ChetehmalApplication Number  
09/832,750 Filed  
4/10/2001

For ON-DEMAND DATA SYSTEM

Art Unit  
2617 Examiner  
Jameson W. Fish

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

I am the

 applicant/inventor. assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96) attorney or agent of record.Registration number 26652

Signature

William W. Cochran  
Typed or printed name970-492-1100

Telephone number

16 Sept. 05  
Date attorney or agent acting under 37 CFR 1.34.

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Majid Chelebmal

Serial No.: 09/832,750

Filed: 10 April 2001

Title: ON-DEMAND DATA SYSTEM

Examiner: Jamieson Fish

Group Art Unit: 2617

Docket: Cab1.02USU1

Confirmation No. 3268

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants hereby submit a Pre-Appeal Brief Request for Review in accordance with the Pre-Appeal Brief Conference Pilot Program. Applicants make the following statement:

## 1. Claim 1 recites

A method of using a managed network and a video cable system operated by a cable system provider to deliver video data on-demand from video servers operated by a content provider to a cable system user....  
(Emphasis Added)

The remaining portions of claim 1 recite a series of steps that describe the "on-demand" video data delivery system.

The Examiner argued that Norsworthy et al. discloses scheduled delivery of video data that is the same as on-demand delivery of data and has referred to Norsworthy, column 2, lines 25-33.

The scheduled delivery of video data, in accordance with Norsworthy, is similar to a pay-per-view type of system that the present invention is intended to replace. Pay-for-view video is provided on a schedule which is set by the provider of data. The user can view the data at the scheduled time of broadcast that is specified by the provider of the data.

Attorney Docket No.: Cabl.02USU1

As disclosed on column 2, lines 27+ of Norsworthy,

Then the internet service provider (ISP) would send a notice to the user stating the time, and location, i.e., frame, line, and segment of video, in which the information will be relayed to the user.

As is clear from the disclosure in Norsworthy et al, the ISP schedules the delivery of data.

Norsworthy does not constitute video-on-demand system as claimed in claim 1. It is well known that video-on-demand systems allow the user to schedule the delivery of video data.

Further, the term "video-on-demand" is specifically defined in Applicants' specification on page 5 lines 16-20.

The video-on-demand, or in general, the data-on-demand system of the present invention, in comparison to pay-per-view, or similar systems, allows a user to access large databases having a great deal of content at the convenience of the user. The user can select content from content providers for delivery to the user at a time that is desirable for the user which does not correspond to a pre-planned broadcast time. (Emphasis Added)

In other words, the term "video-on-demand," as defined in Applicants' specification, is scheduled by the user, and not by the system or supplier of data, as disclosed in Norsworthy.

2. Claim 1 further recites

using a first transport mechanism that is compatible with said managed network to transmit said video data from said video servers through said managed network with a guaranteed quality of service that is sufficient to view said video data without storing said video data at said head end.... (Emphasis Added)

Norsworthy discloses a high bandwidth link 106 that connects the ISP 103 to the Internet 107. In addition, a high bandwidth link 109 connects the ISP 103 to the head end 108. A cable 113 connects the head end to the user's PC 101n. The Examiner argued that the high bandwidth link 109 constitutes a network and that the high bandwidth link constitutes a "managed network" since "for the network to be unmanaged would imply that at no point in time did any individual oversee the construction of the network."

Attorney Docket No.: Cab1.02USU1

The term "managed network" is clearly understood by those skilled in the art to mean a network that is managed by system administrators who use hardware and software products to assist them in managing a network. See Exhibit A, Definition of "Network Management" from Webopedia. Applicants have found no evidence that a "managed network" is a network for which no one ever oversaw the construction of the network, as argued by the Examiner. Applicants respectfully disagree with the position taken by the Examiner and assert that the common understanding of a managed network is that the network is managed and continues to be managed.

Furthermore, Applicants specifically define a "managed network" on page 5, lines 25-31 of Applicants' specification.

The managed IP network 66 provides a guaranteed quality of service by managing various layers of protocol of the network 66. In essence, the managed IP network 66 provides a virtual dedicated line in the network to guarantee delivery of data packets in a fashion that provides the required quality of service. The managed IP network 66 uses real time protocol (RTP), Unix datagram protocol (UDP) and internet protocol (IP) to ensure that data packets are transmitted from the content servers 60, 62 and 64 to translator 68 so they can be decoded as an uninterrupted stream. (Emphasis Added)

Such a managed network is not shown or disclosed anywhere in Norsworthy.

### 3. Claim 1 specifically recites

providing said listing of said video programs that is available from said content provider to said cable system user, said listing being transmitted from said content provider through said managed network, said internet service provider and said cable system to said cable system user without going through said head end.

The Examiner has conjectured that since the ISP 103 of Norsworthy uses known search engines, and that these known search engines provide lists with respect to queries, that the search engine could therefore provide a list of content providers and the content provider list would provide information regarding video data available for downloading from the content provider.

This is pure conjecture on the part of the Examiner. There is no disclosure of the specifically recited functions of claim 1 in Norsworthy. Further, Applicants have requested that the Examiner provide an affidavit pursuant to 37 CFR § 1.104(d)(2) if the

Attorney Docket No.: Cab1.02USU1

Examiner intends to rely on his personal knowledge, which has not been produced. If the Examiner is not willing to provide such an affidavit, the Examiner should produce a reference that teaches these functions. Reliance on pure conjecture as to what might possibly be done does not result in a proper rejection under either § 102 or § 103.

4. Claim 1 also recites

using a first transport mechanism that is compatible with said managed network to transmit said video data from said video servers through said managed network with a guaranteed quality of service that is sufficient to view the video data without storing the video data at the head end. (Emphasis Added)

The Examiner argued that Norsworthy discloses a “guaranteed quality of service” since Norsworthy discloses in column 8, lines 12+ that “the user can request and pay for a guaranteed higher data rate to achieve a better quality or higher resolution picture.”

Norsworthy does not specifically disclose the process of providing a “guaranteed quality of service” as recited in Applicants’ claims, but rather, discloses “a guaranteed higher data rate to achieve a better quality or higher resolution picture.” Guaranteed quality of service is not guaranteed by Norsworthy, just a higher data rate, which does not necessarily result in a guaranteed quality of service. For example, Applicants’ definition of a “managed network” on page 5 clearly states that “the managed IP network 66 provides a virtual dedicated line in the network to guarantee delivery of data packets in a fashion that provides the required quality of service.” A guaranteed bit rate does not result in “a virtual dedicated line” of a “managed network” as defined by Applicants. Data packets can be delivered at different times and in different orders and still have a high data rate which does not provide a guaranteed quality of service. In other words, data packets that are delivered out of order, even though these packets are delivered at a high data rate, do not necessarily provide a guaranteed quality of service, such as that provided by “a virtual dedicated line.”

With respect to the rejection of claim 1 under § 103 over Norsworthy et al. in view of Ahmed et al., Ahmed et al. does not make up for the deficiencies of Norsworthy. Again, there is no disclosure of a managed network with a guaranteed quality of service. There is no disclosure of providing said listing of video programs that is available from

Attorney Docket No.: Cabl.02USU1

said content provider. Further, Ahmed does not disclose a video data on-demand system, as set forth in line 1.

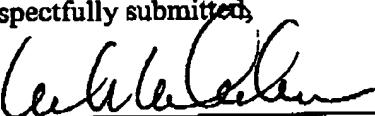
Further, Ahmed does not disclose a "virtual dedicated line" as part of a "managed network," as these terms are defined in Applicants' specification. For these reasons, claim 1 is considered to be patentable over the combination of Norsworthy and Ahmed, even assuming arguendo, that these references could be combined as suggested by the Examiner.

Further, there is no suggestion or teaching within the four corners of the references for combining these references. See *Friction Div. Products, Inc. v. E.I. DuPont de Nemours & Co., Inc.*, 8 USPQ 2d 1652, 1664 (D. Del. 1988) citing *In re Wesslau*, 353 F.2d 238, 241, 147 USPQ 381, 393 (CCPA 1965). The Examiner has recited a motivation for combining the references that is not disclosed or suggested by the references. Each of these references is directed to very different inventions. For example, Norsworthy, et al is a system for providing additional bandwidth in a down stream direction. Ahmed is a system for providing bundled services. Mimura is a transport protocol conversion method. There is no motivation for combining these references and the Examiner has stated reasons that do not follow from the references.

Claim 12 includes similar limitations as recited in claim 1 and is considered to be patentable for the same reasons as set forth above.

Dated this 16<sup>th</sup> of September, 2005.

Respectfully submitted,

By: 

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Customer No.: 27479

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# network management

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- **Security:** Ensuring that the network is protected from unauthorized users.
- **Performance:** Eliminating bottlenecks in the network.
- **Reliability:** Making sure the network is available to users and responding to hardware and software malfunctions.

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**GN Nettest home page**

Provides company and product information for GN Nettest, designer and manufacturer of transmission, signaling, fiber optic, and protocol analysis equipment.

**Minacom International**

Home page of Minacom International, supplier of network quality management solutions. The site offers links to company and product information, network management resources, and technology descriptions.

**Network management applications**

Home page of LINMOR Technologies Inc., a supplier of enterprise-wide systems and network management applications. Includes information on their Nebula product line, company information, and a collection white papers on network management and technology.

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Provides links to Internet and OSI network management, vendors, standards organizations, network management software, and research organizations and literature.

### SNMPLink.org

This site provides links and informations about SNMP and MIB.

### Systems and Network Management Report

Provides in-depth analysis of enterprise systems management, network management, distributed client-server platforms, tools, and technologies. Covers systems/network management news from Tivoli Systems, Computer Associates, PLATINUM technology, Hewlett-Packard, etc.

### The Network Management Consortium

Provides links to organization and membership information, technical information including test suites and equipment lists and RFCs, educational information, and related Web resources.

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**Microforge.net Limited: Network Management Services** - Network Auditing and LAN/WAN Asset Management solutions to reduce the total cost of ownership for the IT assets that you manage.

**Hoover's: The Management Network Group, Inc. Company Research** - Find information on Management Network with operations and products, financials, officers, competitors and more at Hoover's.



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